

**From:** Peter  
**To:** Microsoft ATR  
**Date:** 12/28/01 5:09pm  
**Subject:** The DOJ apparently considers this monopoly to be a positive outcome.

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To whom it may concern,

Though I could find no reference to this provision in the judgement, information has been widely circulated of a gift of software to underprivileged schools. It should be obvious to the government that the provision of software to the underprivileged by Microsoft, might have been done even without the court decision, in the interest of discouraging piracy and the use of alternatives, and that the cost of this remedy is insignificant to Microsoft. This "remedy" could just as easily be written off as a small part of the marketing cost for Windows XP, as it in no way penalizes the company.

The prohibition against retaliation against OEMS for shipping dual-boot systems is very weak., as are the provisions concerning "middleware." In any event, The concern with middleware is a red-herring. Why has the entire Microsoft Office suite been excluded from the middleware definitions? That product is the single biggest application platform for Microsoft, and one of the chief tools for broadening the monopoly, yet it is not touched by the judgment.

The limited disclosure provisions for source code and file formats does nothing to encourage competition from the biggest group that has the potential to compete with Microsoft: the free software community. That community cannot participate in "limited disclosure" schemes, nor distribute the results of work based on those agreements.

The blanket permission to keep security and rights management API's essentially secret, (J. 1.) lays the groundwork for making it illegal to produce competitive software. The Department of Justice should know that all electronic commerce is predicated on the use of such systems, and that this exception amounts to a gift of additional market share to the company in markets where they do not already dominate, by raising the barrier to entry for competitive companies still higher.

While it is certainly legitimate to keep keys or tokens secret, the provision covering authentication mechanisms allows Microsoft to divulge essentially nothing about key technologies such as Passport. It further will reduce the security of desktops worldwide, by allowing Microsoft to rely on "security by obscurity." which is widely discredited in technical circles. As a counter example, one need only look to the NSA's own release of a secured operating system (<http://www.nsa.gov/selinux/>). Mechanisms and API's need to be public, in order for them to undergo sufficient scrutiny, and provide a level playing field for competitive implementations.

As for the technical committee, it is inconceivable that Microsoft should have any say whatever in who oversees their compliance. This makes as much sense as giving a prisoner his choice of jailer.

Taken together, it would appear that the government has decided that, in this particular case, a monopoly is good. In order to make the monopoly as complete as possible, The government's remedy ensures that no viable alternatives can be legally produced. This is a misguided conclusion in countless ways. It takes for granted that the current monopoly will continue for the foreseeable future, so there is no point in encouraging any competition. It assumes that there is no cost to the US economy for the continuation of this monopoly, when in reality there is an incalculable cost in lost innovation. There is a tacit approval of what will essentially become a tax on all citizens, payable to Microsoft, in order to function in the digital environment. In fact, every effort must be made, not only to forestall the encroachment of monopolists into new markets, but to roll them back in markets which they already control through the past and current use of illegal tactics.

Leaving the weakness of the proposed remedy to one side, one has to

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consider what an adequate remedy for this monopolist is. The clear answer is to encourage competition to arise, and for the monopolist, as a form of reparation, fund the leveling of the playing field. There is only one direction to look in to find a potential competitor for Microsoft: Free Software.

There is a reason why Microsoft characterizes free software as cancer. (Steve Ballmer <http://www.suntimes.com/output/tech/cst-fin-micro01.html>) (see <http://www.linuxuser.co.uk/articles/issue12/LU12-ebenmoglen.html>, an article by Columbia University legal history professor Eben Moglen, for a fuller discussion.) Free Software has the potential to compete and beat Microsoft, and encourage a more vibrant software and hardware industry.

Current examples of such products are the apache web server, which has a larger market share than Microsoft's own IIS, and is immune to the many infections which plagued the Microsoft driven portion of the internet this past summer, in spite of the secrecy of their current security provisions. All key technologies of the internet are public, and allow for different companies to produce competitive implementations. Why should the Microsoft Word file format (for example) be any different?

Free Software means simply allowing programmers in thousands of companies to co-operate to produce ever better software in a much more competitive environment, where the best implementation wins, and the others wither and disappear. It is, in no way, an impediment to free enterprise or for profit software development. It has nothing to do with altruism, but is instead a method of harnessing the self interest of vast numbers of technical people, trying to help their respective companies innovate. Free Software is about leveling the playing field to allow innovation to arise from anywhere. All major computer systems vendors, (such as: ibm, sun, dell, hp, compaq, intel) both support and benefit from Linux development, for example.

Innovation can come from any direction, when the environment is open to it. It can come from a company that wants to sell cheaper network file servers ([www.raidzone.com](http://www.raidzone.com)), cheaper internet routers ([www.snapgear.com](http://www.snapgear.com)) to any hardware device that requires an operating system, which can include anything from cellular phones to dishwashers. All of the products mentioned above can be produced today, based on free software technology. If free software withers because of an inability to legally produce competitive products, the US economy will suffer.

A big part of the problem with the Microsoft monopoly is the immense chill it puts on any software development project. The first barrier is that information required is not available. There is invariably a cost associated with obtaining information, if it is available at all. The second barrier is finding the information (reverse engineering is complicated, costly, and includes legal complications beyond the means of small start up companies.) The third barrier is the natural cap on the market. Since any successful software company, once they achieve a certain market presence, will either need to compete with Microsoft in the current, steeply tilted environment or be swallowed outright by them.

Currently, products based on Free Software can survive because they use IETF (Internet Engineering Task Force) standardized interactions with other devices, and can leverage their efforts off those done in the mainstream desktop free operating system realm. If Microsoft is the only source of devices to interact with, and knowledge of the protocols is only available at high cost to select individuals within large corporations, the pace of innovation will be severely constrained, the number of people literate about computing devices will be severely limited by the lack of an ability to reference others' work in practicing their art. In short, the software industry, outside of Microsoft, will be largely limited to point-and-click installation

of Microsoft applications.

It is fundamental to realize that the Microsoft monopoly is hurting innovation, and sooner or later, that will hurt US competitiveness. Combating the harmful effects on the US software (and hardware) industry should be the chief object of the remedies.

Any remedies should take into account the needs of Free Software to remain viable. First, there should be full disclosure to the public domain of all file formats and networking protocols, as well as validation suites, to allow quick and complete implementation of competitive products. For example, there should be a collection of reference word documents, which, taken together, exercise all of the features of the format, such that an implementer can have confidence, that should Microsoft Word work differently with a given file than a competitive suite which successfully interacts with the reference documents, then it is a bug, and must be remedied in a timely manner (IE. either Word must be changed to conform, or the reference documents improved to include the missing functionality.) While the cost of maintaining that information should be borne by Microsoft in perpetuity, given the inherent conflict of interest, it would be best if it were maintained by a third party.

Second, there should be a ban on the bundling of an operating system with the sale of a desktop computer. Buyers should have to make the choice to explicitly purchase software (which could be packaged on a CDROM "recovery disk", such that the installation only requires a few clicks.) The cost of software needs to be indicated separately from the hardware. Buyers will then know what the software costs, and have the choice of purchasing or using alternatives.

Third, the remedies should not do anything to further extend Microsoft's monopoly, but should instead encourage competition. In that direction, Microsoft should provide funding for other parties to provide Free Software alternatives, including technical consulting and ongoing support for five years) to the under privileged, so that the institutions have a chance of being free of Microsoft software by the end of that period.

In summary, the remedy proposed is a counter-productive encouragement to Microsoft to not only continue their unbridled monopolistic practices but expand it into other markets, and constitutes a government stamp of approval on those practices. Proper remedies should aim at reducing the harmful effects of the Microsoft monopoly, and encouraging competitors to arise.

I hope the Department will take these concerns, spoken by a neighbor who knows the impact of this case will be worldwide, to heart. Thank you.

Peter Silva,

(a concerned Canadian)